



No. 571

(4)

Office - Supreme Court, U. S.

FILED

JAN 5 1943

ELMORE COOPER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1942.

IN THE MATTER

OF

SURF ADVERTISING CORPORATION,

Debtor.

MAX ROCKMORE, as Trustee in Bankruptcy of Surf
Advertising Corporation,

Petitioner,

MATHILDE LEHMAN and JOSEPH S. ABRAMS,

Respondents.

BRIEF OF RESPONDENT MATHILDE LEHMAN IN OPPOSITION TO GRANTING OF WRIT.

POINT I.

THE ORDER OF AFFIRMANCE SHOULD NOT BE REVIEWED AS TO THE RESPONDENT LEHMAN BECAUSE FACTUAL DIFFERENCES BETWEEN THE LEHMAN CLAIM AND THE ABRAMS CLAIM MAKE APPELLANT'S PETITION FOR REVIEW AND APPELLANT'S BRIEF IN SUPPORT THEREOF ENTIRELY INAPPLICABLE.

Respondent Lehman has consistently contended throughout this litigation that there were factual differences between the Lehman and the Abrams claims that necessitated the application of different principles of law to each of these claims.

The Lehman claim to a part of the fund in dispute arose from an assignment made by the Fiegel Advertising Co. Inc.

to Lehman, dated June 8th, 1938. The Fiegel Advertising Co. Inc. never went into bankruptcy and no petition for reorganization was ever filed against that Company. On March 23rd, 1939, the Fiegel Advertising Co. Inc. made an alleged assignment of the same contract theretofore assigned to Lehman, to the Surf Advertising Corporation. The assignment carried nothing with it since all rights thereunder had already been transferred to Lehman (*Salem Trust Co. vs. Manufacturers Finance Co.*, 264 U. S. 182).

On December 7th, 1939 the creditors of Surf Advertising Corporation filed an involuntary petition for reorganization. The Trustee of Surf claims that he holds the position of an execution creditor under Sec. 60a of the Bankruptcy Law. The Fiegel Advertising Co. Inc., the assignor of Lehman, was never in bankruptcy, and since Lehman's right to the fund stems from Fiegel, the Trustee of *Surf* could never be in the position of an execution creditor of Fiegel.

It is not conceded that the Trustee had any right to the fund even though he were in the position of a judgment creditor of Surf. The reasons advanced herein are in addition to those urged by the respondent Abrams.

POINT II.

ANSWERING OTHER QUESTIONS OF FACT AND ANSWERING BRIEF OF APPELLANT.

Counsel for the respondent Abrams is filing a separate brief in opposition to the granting of the writ. Respondent Lehman joins with respondent Abrams therein and asks that the Abrams brief be considered on behalf of this respondent as though the arguments therein were fully set forth herein.

Respectfully submitted,

LOUIS J. CASTELLANO,
Attorney for Respondent
Mathilde Lehman.

(2461)

